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3 **UNITED STATES DISTRICT COURT**
4 **SOUTHERN DISTRICT OF CALIFORNIA**

5 ERIK KELLGREN, THERESE
6 KOPCHINSKI, and CHRISTINE LEE,
7 Individually and on Behalf of All
8 Other Persons Similarly Situated,
9 Plaintiffs,
10 v.
11 PETCO ANIMAL SUPPLIES, INC.;
12 PETCO HOLDINGS, INC.; and
13 DOES 1 to 100, inclusive,
14 Defendants.

15 Case No. 3:13-cv-00644-L-KSC

16 **ORDER GRANTING
17 PLAINTIFFS' MOTION FOR
18 FINAL APPROVAL OF CLASS
19 AND COLLECTIVE ACTION
20 SETTLEMENT, CERTIFICATION
21 OF A SETTLEMENT CLASS,
22 REIMBURSEMENT OF
23 ATTORNEYS' FEES, COSTS,
24 EXPENSES AND INCENTIVE
25 AWARDS TO
26 REPRESENTATIVE PLAINTIFFS
27 AND JUDGMENT**

28 Final Approval Hearing: February 12,
1 2018

2 Complaint Filed: March 19, 2013

3 District Judge: Hon. M. James Lorenz
4 Courtroom: 5B (Schwartz)

5 Magistrate
6 Judge: Karen S. Crawford
7 Trial Date: Not Set

8 MARIA COTE, Individually and on
9 Behalf of All Other Persons Similarly
10 Situated,
11 Plaintiffs,
12 v.
13 PETCO ANIMAL SUPPLIES, INC.;
14 PETCO HOLDINGS, INC.,
15 Defendants.

16 Case No. 3:17-cv-00898-L-KSC
17 Complaint Filed: January 31, 2017
18 (D. Mass.)

19 Transferred to SDCA: May 4, 2017

20 Case No. 13-CV-00644-L-KSC

21 **ORDER GRANTING FINAL APPROVAL OF SETTLEMENT AND JUDGMENT**

<p>1 DESERIE MICHEL, on behalf of 2 herself and all others similarly 3 situated, 4 Plaintiffs, 5 v. 6 PETCO ANIMAL SUPPLIES, INC. 7 and PETCO HOLDINGS, INC., 8 Defendants.</p>	<p>Case No. 3:17-cv-01092-L-KSC Complaint Filed: April 14, 2016 (E.D.N.Y.) Transferred to SDCA: May 30, 2017</p>
<p>9 HEATHER VARGAS, Individually 10 and on Behalf of All Other Persons 11 Similarly Situated, 12 Plaintiffs, 13 v. 14 PETCO ANIMAL SUPPLIES, INC.; 15 PETCO HOLDINGS, INC., 16 Defendants.</p>	<p>Case No. 3:17-cv-01561-L-KSC Complaint Filed: April 6, 2017 (D.N.J.) Transferred to SDCA: August 3, 2017</p>
<p>17 JAMES HECKER, on Behalf of 18 Himself and All Others Similarly 19 Situated, 20 Plaintiff, 21 v. 22 PETCO ANIMAL SUPPLIES, INC., 23 PETCO ANIMAL SUPPLIES STORES, 24 INC., PETCO HOLDINGS, INC., and 25 DOES 1 TO 100, Inclusive, 26 Defendants.</p>	<p>Case No.: 3:17-cv-01169-L-KSC Complaint Filed: November 23, 2016 (N.D. ILL.) Transferred to SDCA: June 8, 2017</p>

Case No. 13-CV-00644-L-KSC

ORDER GRANTING FINAL APPROVAL OF SETTLEMENT AND JUDGMENT

<p>1 ROBERT WAGNER, Individually and 2 On Behalf of All Other Persons 3 Similarly Situated, 4 Plaintiffs, 5 v. 6 PETCO ANIMAL SUPPLIES, INC., 7 PETCO ANIMAL SUPPLIES STORES, 8 INC., and PETCO HOLDINGS, INC., 9 Defendants.</p>	<p>Case No.: 3:17-cv-01793-L-KSC Complaint Filed: January 15, 2017 (D. Colo.) Transferred to SDCA: September 28, 2017</p>
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10 **ORDER AND JUDGMENT GRANTING FINAL APPROVAL OF**
 11 **PROPOSED CLASS AND COLLECTIVE ACTION SETTLEMENT**

12 **WHEREAS**, the Plaintiffs and Defendants in the above-captioned
 13 consolidated actions have entered into a Settlement Agreement intended to
 14 resolve the litigation against Defendants arising out of their alleged unlawful
 15 compensation practices for Assistant Managers ("AMs") who were classified
 16 as exempt and not paid overtime; and

17 **WHEREAS**, the Settlement Agreement attached as Exhibit A to the
 18 Declaration of Seth R. Lesser, filed in connection with Plaintiffs' Motion for
 19 Preliminary Approval, Dkt. No. 280-3, together with supporting materials,
 20 sets forth the terms and conditions for a proposed settlement and dismissal
 21 with prejudice of the above actions against Defendants; and

22 **WHEREAS**, the Court was satisfied that the terms and conditions set
 23 forth in the Settlement Agreement were the result of good faith, arms-length
 24 settlement negotiations between competent and experienced counsel for both
 25 Plaintiffs and Defendants; and

26 **WHEREAS**, the Court granted Plaintiffs' Motion for Preliminary
 27 Approval of Class and Collective Action Settlement. Preliminary Certification
 28 Case No. 13-CV-00644-L-KSC

ORDER GRANTING FINAL APPROVAL OF SETTLEMENT AND JUDGMENT

1 of a Settlement Class, Appointment of Class Representatives and Claims
2 Administrator, Approving Notice and for Final Fairness Hearing (the
3 "Preliminary Approval Motion") and supporting materials, Dkt. Nos. 289, 292,
4 294; and

5 **WHEREAS**, the Court ordered the Notice and Claim Form and Consent
6 to Join FLSA Action incorporated into the Settlement Agreement to issue to
7 the Settlement Class in the manner specified in Plaintiffs' Motion for
8 Preliminary Approval;

9 Accordingly, the Court finds, concludes, and hereby orders as follows:

10 1. Plaintiffs' Motion for Final Approval is **GRANTED**.

11 2. The Court has jurisdiction over the subject matter of this action, all
12 members of the Settlement Class, and Defendants pursuant to 29 U.S.C. §§
13 1331, 1332, and 1367.

14 3. All defined terms in the Settlement Agreement shall have the same
15 meaning in this Order and Judgment.

16 4. In accordance with Federal Rule of Civil Procedure 23 and the
17 requirements of due process, the Settlement Class has been given proper and
18 adequate notice of the Settlement and the Fairness Hearing, and such notice
19 was carried out in accordance with the Preliminary Approval Order.

20 5. Prior to the Fairness Hearing, a declaration was filed with the
21 Court by the Claims Administrator, JND Legal Administration, confirming
22 that Notice was given in accordance with the terms of the Court's previous
23 Order preliminarily approving the Settlement and as required by the Class
24 Action Fairness Act, 28 U.S.C. § 1715, *et seq.*

25 6. The Notice and notice methodology implemented pursuant to the
26 Settlement Agreement and the Court's Preliminary Approval Order (a) were
27 appropriate and reasonable and constituted due, adequate, sufficient notice to

1 all persons entitled to notice; and (b) met all applicable requirements of the
2 Federal Rules of Civil Procedure and Due Process.

3 7. The Settlement was negotiated with the assistance of an
4 experienced mediator, at arm's-length, by experienced counsel who were fully
5 informed of the facts and circumstances of the action and of the strengths and
6 weaknesses of their respective positions. The Settlement was reached after the
7 parties had completed extensive discovery and investigation, conducted legal
8 research and written discovery, conducted multiple depositions, and reviewed
9 tens of thousands of pages worth of documents. Counsel for both sides were
10 well positioned to evaluate the benefits of the Settlement, taking into account
11 the expense, risk, and uncertainty of protracted litigation over numerous
12 questions of fact and law.

13 8. The Settlement is fair, reasonable, and adequate. The Court
14 approves the Settlement.

15 9. The Court finds that for the purpose of this Settlement, the
16 requirements of Rule 23 of the Federal Rules of Civil Procedure are satisfied,
17 and that a class action is an appropriate method for resolving the claims
18 asserted in this litigation. All the prerequisites for class certification under
19 Rule 23 are present. The Settlement Class Members are ascertainable and too
20 numerous to be joined. For settlement purposes, questions of law and fact
21 common to all Settlement Class Members predominate over individual issues
22 and should be determined in one proceeding with respect to all of the
23 Settlement Class Members. The Settlement Class Representatives' claims are
24 typical of those of the Settlement Class for settlement purposes. The Settlement
25 Class Representatives and Class Counsel meet the adequacy requirements of
26 FED. R. CIV. P. 23(a)(4). For settlement purposes, the class action mechanism
27 is superior to alternative means for adjudicating and resolving the state law
28 claims asserted in these consolidated actions.

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ORDER GRANTING FINAL APPROVAL OF SETTLEMENT AND JUDGMENT

1 10. The Court further finds that the settlement of the FLSA claims
2 asserted by Plaintiffs and those who have consented to join the *Kellgren* action
3 is a settlement of a bona-fide dispute and is a fair and reasonable compromise
4 of the FLSA claims asserted.

5 11. The Court certifies the following Settlement Class for purposes of
6 this Settlement only:

- 7 • Individuals who filed with the Court consents to join the *Kellgren* action
8 and who, as of the date of entry of the Preliminary Approval Order had
9 not withdrawn their consent or had their claims dismissed;
- 10 • Individuals who worked in Colorado as an Assistant Manager ("AM") for
11 Petco at any time between January 15, 2014 and June 18, 2016;
- 12 • Individuals who worked in Illinois as an AM for Petco at any time
13 between November 23, 2013 and June 18, 2016;
- 14 • Individuals who worked in Massachusetts as an AM for Petco at any time
15 between January 31, 2014 and June 18, 2016;
- 16 • Individuals who worked in New Jersey for Petco as an AM at any time
17 between April 6, 2015 and June 18, 2016;
- 18 • Individuals who worked in New York for Petco as an AM at any time
19 between April 14, 2010 and June 18, 2016;
- 20 • Individuals who worked in Oregon for Petco as an AM at any time
21 between October 21, 2014 and June 18, 2016; and
- 22 • Individuals who worked in Pennsylvania for Petco as an AM at any time
23 between July 14, 2014 and June 18, 2016.

24 12. Class Counsel, Klafter Olsen & Lesser LLP and Hepworth
25 Gershbaum & Roth, PLLC are hereby awarded attorneys' fees in the amount of
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27 \$ 2,665,000.00 which the Court finds to be fair and reasonable, and
28 \$ 161,901.00 in reimbursement of reasonable expenses incurred in

prosecuting the action. The attorneys' fees and expenses so awarded shall be paid from the Settlement Sum pursuant to the terms of the Settlement Agreement.

13. The Court finds that the services provided by the Named Plaintiffs to the Settlement Class have conferred a substantial benefit on the Settlement Class, and hereby directs payment as provided under the terms of the parties' Settlement Agreement from the Settlement Sum to Named Plaintiffs Erik Kellgren, Maria Cote, James Hecker, Therese Kopchinski, Christine Lee, Deserie Michel, Heather Vargas, and Robert Wagner of \$10,000 each as Incentive Awards.

14. The certification of the Settlement Class is for settlement purposes only and shall not constitute, nor be construed as, an admission on the part of Defendants that these cases, or any other proposed or certified class or collective action is appropriate for class or collective treatment pursuant to Federal Rule of Civil Procedure 23, 29 U.S.C. § 216(b), or any other similar class or collective action statute or rule. Nor shall this Order and Judgment be construed, used, offered or admitted into evidence as an admission or concession by Defendants of the validity of any claim or any actual or potential liability or fault.

15. Final Judgment is entered in the above-captioned cases in accordance with the Settlement Agreement.

16. Following the Effective Date provided for in the Settlement Agreement and receipt of the Settlement Sum from Defendants, as set forth in the Settlement Agreement, the Claims Administrator shall effectuate distribution of the settlement funds to the Settlement Class Members who made timely and valid claims in accordance with the terms of the Settlement Agreement.

17. Upon the Effective Date provided for in the Settlement Agreement, all State Settlement Class Members who have not timely and validly excluded themselves from the Settlement have released the claims as set forth in Section 5 of the Settlement Agreement and which is incorporated herein.

18. Upon the Effective Date provided for in the Settlement Agreement, all Federal State Class Members who submitted timely and valid Claim Forms have released the claims as set forth in Section 5 of the Settlement Agreement and which is incorporated herein.

19. The claims of all Opt-In Plaintiffs who neither timely and validly requested exclusion nor submitted a timely and valid Claim Form are hereby dismissed with prejudice.

20. The claims of all Opt-In Plaintiffs who timely and validly requested exclusion from the Settlement are hereby dismissed without prejudice.

21. All Settlement Class Members who have not timely and validly excluded themselves from the Settlement are barred and permanently enjoined from pursuing and/ or seeking to reopen their claims that have been released or dismissed in the Settlement Agreement or seeking to file, commence, prosecute, maintain or participate in any other claim, lawsuit, or other proceeding based on the claims that have been released or dismissed in the Settlement Agreement and herein.

22. These consolidated actions are **DISMISSED WITH PREJUDICE** except that the Court shall retain exclusive and continuing jurisdiction of the above-captioned actions, the Settlement Class Members and the Defendants, to interpret and enforce the terms, conditions and obligations of the Settlement Agreement.

1 **IT IS SO ORDERED.**
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Dated: February 13, 2018


Hon. M. James Lorenz
United States District Judge

Case No. 13-CV-00644-L-KSC

ORDER GRANTING FINAL APPROVAL OF SETTLEMENT AND JUDGMENT